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INFO WHA CENTRAL AMERICAN COLLECTIVE
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C O N F I D E N T I A L GUATEMALA 000929

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E.O. 12958: DECL: 2019/10/09
TAGS: [PGOV](#) [PINR](#) [KCRM](#) [KJUS](#) [GT](#)
SUBJECT: Three Supreme Court Justices Replaced at CICIG's Behest

REF: GUATEMALA 919

CLASSIFIED BY: Drew G. Blakeney, Political and Economic Counselor,
State, P/E; REASON: 1.4(B), (D)

Summary

11. (C) On October 7, the Guatemalan Congress replaced three of the thirteen justices it had elected September 30 to the new Supreme Court, which is to be sworn in NLT October 13. The three were the most problematic of six whom CICIG publicly signaled as unfit to serve on the Supreme Court. All three enjoyed the strong backing of First Lady Sandra Torres de Colom. The Ambassador and Emboffs successfully encouraged leaders of parties aligned with the governing UNE to support the replacement candidates. The substitutions should tip the balance of power in the Court in favor of those supporting the rule of law, resulting in a court with which we can better cooperate. CICIG's public accusations touched off a political battle which may be a watershed event. It pitted CICIG Commissioner Castresana, supported by the international community, directly against First Lady Sandra Torres, with Torres coming out the loser. The outcome has implications for UNE unity, and the First Lady's 2011 political plans. End Summary.

Congress Replaces Three Problematic Justices-Elect

12. (C) On the evening of October 7, the Guatemalan Congress voted by overwhelming majorities to replace the three most problematic justices they had elected September 30 to the Supreme Court (reftel). Congress' decision to reconsider its election of some of the justices-elect was a response to an October 6 appeal to Congress by Carlos Castresana, Commissioner of the UN-led International Commission Against Impunity in Guatemala (CICIG), in which he provided specific allegations against six of the justices-elect (who, in turn, were among the eight Supreme Court finalist candidates he denounced September 29). Congress was also responding to a public backlash against corruption generated by Castresana's initial, September 29 denunciation, strongly negative press reactions, as well as complaints against individual justices-elect filed by various civil society organizations, lawyers, and private individuals during October 2-4. Previous public statements by the Ambassador on the Supreme Court made clear that the USG firmly supported CICIG's move.

13. (C) The compromise decision to replace the three justices-elect

was the product of an October 7 negotiation among the congressional leaders of the governing UNE party and its congressional allies, the GANA, FRG, Guatemala Bench (BG), Unionists, and UCN. Leaders of the six parties had led the September 29 congressional election of the Court over CICIG's objections, but under intense international, press, and public pressure, members of the GANA and Guatemala Benches (and possibly others) reconsidered. With encouragement from the Ambassador, Emboffs, and CICIG, leaders of these parties changed their minds and refused UNE pressure - coming directly from First Lady Sandra Torres de Colom - to seat the Court as originally elected. With a Constitutional Court ruling affording legal cover for GANA, BG, and the opposition LIDER and Patriot Parties to modify the election, the UNE bench found itself in the minority. With its position rendered untenable, UNE decided to eschew further public and international criticism, and instead go along with modifying the election. Negotiations among leaders of the six benches produced agreement that the three candidates against whom CICIG had made the most serious accusations would be replaced.

14. (U) The three justices-elect who were replaced are:

-- Lesbia Jackeline Espana Samayoa, whom First Lady Sandra Torres strongly supported. CICIG accused Espana of having failed to disclose that she is a state contractor, and noted formal complaints alleging obstruction of justice, questionable rulings, and that she had received a USD 25,000 bribe to absolve a murderer.

-- Elda Nidia Najera Sagastume, sister of a serving UNE deputy, supported by the UNE and the First Lady. CICIG accused Najera of systematically absolving or otherwise providing lenient treatment to FRG and UNE political figures such as former MinDef Eduardo Arevalo Lacs, former President Alfonso Portillo, and former President of Congress Eduardo Meyer (all of whom are implicated in corruption).

-- Manuel de Jesus Pocasangre, former UNE candidate for deputy in 2007, and father of the current Governor of Guatemala Department. CICIG noted Pocasangre had been sanctioned USD 500,000 for misuse of official funds when he occupied a senior position at the Ministry of Agriculture. Press alleged that Pocasangre is also a former business associate of notorious narcotrafficker and former Deputy and Mayor-Elect Manolo Castillo, accused of masterminding the 2007 PARLACEN murders.

15. (C) Congress elected to replace the three with Luis Arturo Archila Lerayees, Jose Arturo Sierra Gonzalez, and Luis Alberto Pineda Roca. Neither the Embassy nor CICIG have derogatory information about any of the three. However, a CICIG employee told Pol/Econ Counselor that Archila (who is 71 years old and will face mandatory retirement at 75, before he is able to complete his five-year term) has a son who worked as a defense lawyer for narcotraffickers. CICIG believes his son could represent a vulnerability.

President Denies Wife's Role

16. (C) President Colom publicly distanced himself from the process on several occasions, citing separation of powers. He also asserted that his wife was not involved in the selection process. (Comment: No one close to the process finds that assertion to be credible; Sandra Torres de Colom is widely known to have directed the UNE's role in the process via her sister, Gloria Torres. End Comment.) In multiple private meetings and phone calls October 4-7, the President and his key advisers were looking for a way to give in on at least two of the disputed judges. On several

occasions, the President's advisers urged the Ambassador to press key UNE party allies to vote against justices desired by the First Lady; the Ambassador in fact carried out an intensive lobbying effort with government allies and opponents in support of the successful effort to withdraw the three justices. The Ambassador privately told President Colom that the selection of the new Supreme Court was critical to the rule of law, and that the GOG's credibility was at stake. He also stressed that the USG's ability to work with this government, and the next more effectively on security and justice matters depended on having competent, independent courts.

Stresses Within UNE, Congressional Alliance

17. (C) President of Congress Roberto Alejos (protect) told the Ambassador that the First Lady's control of UNE's participation in the courts selection process had further aggravated existing strains within the party. He added that some party members were beginning to perceive President Colom as a lame duck given his wife's waxing influence, even though two years remain in his term. UNE Deputy Christian Boussinot told EconOff that he and other centrist deputies were considering leaving the party due to the First Lady's increasingly assertive efforts to move the party to the left, and were troubled by the First Lady's handling of the selection process. GANA Deputy and former President of Congress Jorge Mendez Herbruger told Pol/Econ Counselor that GANA bench leaders Jaime Martinez and Manuel Barquin were starting to realize the public price to be paid for the close association with UNE, and

had told GANA deputies they were considering ending their alliance with UNE. BG Deputy Rosa Maria de Frade (protect), who is often at odds with her fellow bench members, dismissed the possibility that her bench would distance itself from UNE due to lucrative infrastructure construction contracts that BG Deputies Eduardo Castillo and Luis Contreras have with the government.

Comment

18. (C) CICIG's direct approach to Congress and confrontation of the First Lady's interests by demanding a cleaner Supreme Court appears to have paid off: There are now ten of thirteen Supreme Court justices-elect for whom neither the Embassy nor CICIG has derogatory information. Getting a relatively clean court is of paramount importance for the rule of law in part because Guatemala's Supreme Court administers the entire court system, in addition to being the final judicial arbiter. Under the First Lady's leadership, the governing UNE placed itself in direct opposition to CICIG and the international community, and lost. The defeat is aggravating the UNE's internal stresses and placing the party's key congressional alliances under strain. Civil society feels boosted in its new activism. Congress is now preparing to elect 90 appellate court judges; many deputies are actively seeking CICIG's and the international community's opinions of the candidates before they cast their votes. Their appears to be little backlash against CICIG or the Embassy for their roles.

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